IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL REVISION No. 909 of 1999

USHA DEVI SHRIMALI
V/S
PRI. GOVT. MADAN MOH.AYU.COLLEGE

Mr. TRIBHUVAN GUPTA, for the appellant / petitioner

Mr. SANJEEV SHARMA, for the respondent

Date of Order : 29.1.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

By the impugned order, the learned Lower Appellate Court, allowing the misc.appeal of the respondents, has allowed the respondent's application filed under O.9 R.13 CPC, and remanded the matter back to the learned trial court with the direction to the parties to appear before the trial court on 28.5.99.

The matter arises in the circumstances, that the proceedings were initiated by the petitioner before the Authority under Payment of Wages Act, which proceedings proceeded exparte, and on 18.10.93, the order was passed for making payment of wages etc. Thereupon, application was filed for setting aside the exparte order, alleging there that employer came to know of the order on 21.1.95. However, that application was dismissed by the trial court vide order dt. 11.7.95. It was found by the Authority that the employer did not receive the copy of the claim along with the notices, but then it had knowledge about the pendency of proceedings, and did not take steps to find out the progress of the litigation. Then on 19.10.93, again notices were sent, to which also, employer did not respond. As such, Authority did not find any sufficient ground to set aside the exparte proceedings. The learned Lower Appellate Court found that since summons were not accompanied with the copy of plaint, it was not proper for the trial court to proceed exparte.

I have perused the orders of two courts below. I do not find any

jurisdictional error in the order of learned lower Appellate Court. The learned lower Appellate Court has found that it was in the interest of justice necessary, in the circumstances of the case, to accept the application filed under O.9 R.13 CPC, and hear the matter bi-parte.

In these circumstances, the revision petition, thus has no force, and is hereby dismissed.

However, since it is informed by learned counsel for the petitioner that payment in compliance of order dated 18.10.93 has already been received by the petitioner, way back in the year 1994, in the peculiar circumstances, it is directed that, as a consequence of setting aside the exparte proceedings, and ordering the matter to be bi-parte, it will not be necessary for the petitioner to pay back the amount received by him pursuant to order dated 18.10.93. However, it is made clear that payment received by the petitioner, shall abide by result of bi-party hearing of matter by the Authority concerned.

(N P GUPTA),J.

/Srawat/